

Planning Commission Meeting for New Castle City took place on July 25, 2011 at 6:30 p.m. in the City of New Castle's Town Hall.

Members Present: David Bird, Chair
William Simpson, Co-Chair
Joe DiAngelo
Susan Marinelli
Jonathan Justice
Dorsey Fiske
Dr. Jack Norsworthy
Florence Smith
Vera Worthy*

Also Present: Marian Hull, URS, City Planner
Daniel R. Losco, City Solicitor

Mr. Bird called the meeting to order at 6:35 p.m. Roll call was taken.

*Ms. Worthy joined the meeting at 6:37 p.m.

Approval of Minutes – A motion was made, seconded, and approved to accept the minutes of the June meeting as distributed.

Update on Planning Studies – Ms. Hull reported there have been no changes since the last meeting and no hearing has been scheduled. There has been no contact with WILMAPCO concerning their assistance with professional services concerning a parking study for waterfront access. Mr. Bird will follow up with them. Ms. Hull suggested approaching DNREC for grant monies related to water services. Mr. Bird said the final study to be looked at is the initiation of some type of neighborhood assessment for our Comprehensive Plan for later this year.

Discussion of a proposal to amend Section §230-11, "Gradual elimination of certain uses" in the City Code, and to schedule a public hearing to consider said proposal – Mr. Bird received a memo from the City Administrator informing City Council ("Council") is looking for more detailed information about the screening option, i.e., how it would work, defining what screening is, how it would be perpetually maintained, and a timeframe for when it is approved and when applicable property owners would be required to develop screening plans. Further, once each individual plan is approved by Council or Planning Commission, what timeframe do property owners have to install subject screening. Council did not agree with the suggestion of "12 years for screening" the Planning Commission proposed. Solicitor Losco was present at the City Council meeting and reported on Council's concerns with the suggested timeframe. . He stated there may be one or two properties in town (junkyards or other non-conforming outdoor uses) in this regard. The Planning Commission suggested implementing 12 years for screening. Should it be done in a shorter time frame? What type of screening is suggested (trees, fencing, combination)? Who will be the deciding party to determine what is adequate screening? He suggested the Tree Commission can make adequate suggestions on the types of trees that are appropriate. Whoever makes a decision, if the applicant does not like the decision they can appeal to the Board of Adjustment. Council suggests a timeframe of 12 to 18 months as being a more logical timeframe to implement screening.

Mr. Bird noted the two issues of allowing non-conforming use in perpetuity and the length of time to install screening. Solicitor Losco said perpetuity is another matter. He further stated as long as it is screened it is going to be permitted. Mr. Bird said as long as non-confirming uses are not expanded they can continue. Solicitor Losco said the original proposal suggested a period phase out which is why the 12-year period was initially used to give property owners plenty of time to make transition plans to comply with the Code. Council appears to favor a shorter timeframe. They believe screening will provide the same kind of protection to the public at large and enhance the Gateway District. Business owners can maintain their businesses in perpetuity as long as they maintain the screening.

Ms. Fiske inquired how the ordinance will be implemented and if there will be some kind of penalty if screening is not maintained. Solicitor Losco said this would be a matter for the City's code enforcement officer or city administrator who would provide notice to the property owner and then be given the opportunity to resubmit a corrective plan for screening and go through the process again if necessary. The property owner has the right to appeal to the Board of Adjustment if they disagree with any penalty.

Mr. Simpson said the Planning Commission was asked to make a recommendation to Council and is wondering why Council is now coming back to this body looking to change what we recommended. Solicitor Losco stated Council is taking the next step and is looking for more recommendations from this body. They value the opinion of the Planning Commission. Council is asking for the Planning Commission's recommendations on defining the timeframe, a perpetual maintenance plan, and the types of screening. There has to be an adequate appeal process and they welcome this body's input.

Ms. Hull gave an overview of her firm's experience with this type of screening and advised if there are specific things you do not want people to use for screening that you elaborate on those things. She recommended providing some examples of what might give adequate screening without prescribing exactly what that screening should be. She likes Solicitor Losco's approach and believes the Commission should provide flexibility.

Mr. Bird asked about approval of different types of screening. Is this done through the Planning Commission or other city agencies? Ms. Hull said the administrative process should be more streamlined such as going through city administration, Tree Commission, or code enforcement officer. Solicitor Losco wants due process for appeal rights for applicants to be in place and said allowing people with expertise, such as the Tree Commission, to be involved with trees/shrubs, and ultimately to establish an appeal right, and that a decision maker needs to be identified to get the process to the next level. The Board of Adjustment can hear administrative appeals from administrative decisions. He suggested starting with the city administrator and they can take a recommendation to the Tree Commission on a particular application, make a decision, and if the applicant is not happy with the decision they can appeal to the Board of Adjustment.

He added that Council also discussed what circumstances this applies to and that Section §230-11 addresses three different non-conformities that were to be phased out over a 3-year period. They are junkyards, outdoor signs and other non-conforming outdoor uses. Outdoor non-conforming uses are where the screening process would apply. (*Discussion followed.*)

Mr. Bird asked if another alternative besides trees is possible. Solicitor Losco does not believe the Planning Commission wants chain link fencing in the Gateway District. This kind of fencing could be used in conjunction with trees.

Mr. Simpson would like one person to be in charge of what works and what does not work, such as the Board of Adjustment. Dr. Norsworthy is not in favor of people having to pay a fee in order to be heard if they disagree with a decision. A recommendation for fencing that is set up by the Tree Commission can be in place, and submit an application to the Planning Commission to approve or not approve. Mr. Simpson does not think it is the Planning Commission's responsibility to recommend approval or not. The decision maker should not be a contest between different groups. *(Additional discussion about a process followed.)*

Ms. Hull was asked to prepare some examples, ideas, and figures that are generally accepted for this type of screening to present to the Tree Commission for their review before moving forward. The New Castle County code is complex for the number of isolated situations that exist in the city of New Castle. Mr. Bird will invite the Tree Commission to the next Planning Commission meeting for discussion. Examples would be provided to the Tree Commission in advance for their review.

The timeframe of 12 years for screening that was suggested by this body to Council was revisited and discussion followed. Dr. Norsworthy believes one year is too short and supports 18 months to 2 years as more reasonable. To ask someone to incur an extra expense to plan for within one year would be difficult for some. He agrees that 12 years is too much time. Ms. Marinelli is curious to when the timeframe that is decided upon will begin; from the time after the applicant has gone to the Tree Commission, Board of Adjustment, City Council or would it begin immediately? Solicitor Losco informed it would begin with the change of the zoning code that adopts the downtown Gateway ordinance. *(The timeframe for the process was discussed further.)*

It is Mr. Justice understanding this body was going to work with the Tree Commission to develop a standard which would include fencing and plantings in front of the fencing. This could include flexibility in the type of fencing used if there is planting in front, and this process would eliminate hearings. *(Additional discussion.)*

Ms. Hull said the timeframe being discussed doesn't assume that plantings provide adequate screening immediately unless it combines fencing with landscaping and these parameters can be defined in the ordinance. She asked commissioners if they want to add that something needs to be screened or phased out in 3 years since "3 years" is already stated in the ordinance. Commissioners agreed.

A motion was made by Mr. Simpson to recommend to City Council that the Planning Commission, using its planner, develop a set of guidelines for screening that are appropriate for the Gateway District and that we further reconsider the 12-year period recommendation for businesses operating in the area to remain at 3 years. However, they can remain in perpetuity if they install screening per the guidelines. Ms. Fiske seconded the motion.

Mr. Bird opened the floor for public comment.

Mr. Ennio D'Alessandro asked how properties would be identified that comes under this requirement. Solicitor Losco said this does not affect the Gateway District alone. It could come into play with other rezoning ordinances that arise up in the future. Currently it would affect about six businesses in the Gateway District. (*Discussion followed.*)

Mr. John DiMondi expressed disappointment with this commission moving beyond Ms. Hull's recommendation stated at the beginning of Gateway discussions that existing businesses should be left alone unless their uses cease to exist or they sought rezoning. You want to make our properties non-conforming that has implications such as not being able to get a commercial mortgage unless their use is ceased. This takes away from the future value of his property. He does not support screening for security reasons. (*Further discussion.*)

A representative from Morris James speaking on behalf of Almar's Outboards is grateful for considerations in this matter citing jobs, and should the Commission proceed in this direction and same be affirmed by City Council, his client would immediately start the process involved with the screening requirements noted.

Roll call vote was called.

Mr. DiAngelo voted in favor stating that 3 years in an acceptable timeframe for screening.

Ms. Johnson voted in favor citing the 3 year timeframe as acceptable.

Dr. Norsworthy voted in favor citing the same rationale.

Mr. Simpson voted in favor noting we need to make it easier to do business the way we want them to do it and not discourage business.

Ms. Marinelli voted in favor citing the same rationale.

Mr. Justice voted in favor citing the same rationale.

Ms. Worthy voted in favor citing the same rationale.

Ms. Fiske voted in favor citing the same rationale.

Mr. Bird voted in favor noting his concern that flexibility be used in what is approved and to give property owners the ability to come to us and review the standard saying this is how they will comply with the standard. He thinks the 3-year period is reasonable and the process will expedite the approval process.

The motion was passed.

Note: Mr. Simpson intentionally left out of his motion "who" we would work with (planner, City agencies) to allow us flexibility to reach out to whoever we need to speak with.

Mr. Bird said once the draft minutes from this meeting are distributed and reviewed by commissioners, then the motion needs to be submitted to City Council for their consideration.

Proposed Riverfront Concept Plan – Linda Ratchford and Gail Sykes of the Historic New Castle Alliance ("Alliance") were present along with Jeffrey Bross, P.E. and John Fellowes, Project Manager of Duffield Associates to discuss the Alliance's proposal as submitted to the Planning Commission.

Mr. Bross noted their proposal includes a significant pro bono contribution and they believe their approach is appropriate. They are working to get enough planning work done to get the

City to a point where outside funding can be researched. They have worked with other municipalities throughout the Mid-Atlantic region.

Mr. Fellows presented to the Commission. The initial plan is to gather all information available on surveys for the area to develop initial concepts to present to the appropriate agency for the review process. Based on this information they would develop a feasibility study. They plan to do a design charrette (open forum brainstorming-like session) involving the City and stakeholders to refine initial concepts on what the City would like to see in the master plan. Based on the information and input received at the design charrette they would develop a final master plan concept. This color-rendered plan would be presented to the City and could be used as a funding mechanism for grant applications.

Mr. Bird noted some members of the public have concerns with the project and inquired if they would be involved in the design charrette. Mr. Fellows said the public should be involved in much of the process. It would be good to show in grant applications that the public is involved and some grants require public interaction.

Mr. Bross noted the evaluation will be preliminary but will include a budget and permitting feasibility. Their coastal and structural engineers will be making a visual assessment that will include the ice breakers and piers. Their timeframe is about 10 weeks. *(Discussion followed about possible uses that include day boat and/or fire company rescue boat usage, the three forts ferry, and the Kalmar Nyckel.)*

Mr. Bross pointed out the plan is not just to create physical things but could suggest waterfront restoration such as installing shoreline practices and plantings. There is funding available for these kinds of activities and could be an ecological part of the plan. They are aware of the dike project in the City.

Mr. Bird informed Duffield would be coordinating with the Trustees in this process because of Battery Park. He asked Ms. Hull how this study affects the City's Comprehensive Plan. She said the study is consistent with the plan and stated the importance of being kept in the review chain and being involved with the planning shirette as being sufficient. *(Discussion followed.)* Mr. Simpson clarified the Mayor and Council owns Battery Park but the Trustees administer it.

Budget Review – Mr. Bird reported we have been approved for \$10,000 for professional planning purposes; \$6,000 for the waterfront study; the remaining funds (\$4,000) is to initiate neighborhood planning and the parking aspect being looked at with WILMAPCO doing a major part of this. We need to track the work URS does this year on other applications. Mr. Simpson suggested hat Council should pay for work it generates.. *(Discussion followed.)*

Other Business – Ms. Hull informed that City Council is having a special meeting to discuss DelDOT on Tuesday, 8/2/11, at 6 p.m. in Old Town Hall.

Commissioner's Comments – None.

Comments from the Public --None.

Planning Commission Meeting Minutes
July 25, 2011
Page 6

Next Meeting – The next scheduled meeting is 8/22/11 at 6:30 p.m.

Adjournment – **A motion was made and seconded to adjourn the meeting. The meeting was adjourned at 8 p.m.**

Respectfully submitted,

Debbie Turner

Debbie Turner
Stenographer